

State of California
Environmental Protection Agency
Air Resources Board

Report to the California Legislature

on

**Implementation of California's
Minor Violation Program**

(November 18, 1999)

This report is submitted to comply with the following requirements:

Health and Safety Code section 39150(a) (Minor Violation) states:

"The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, or welfare or the environment are taken into account."

Health and Safety Code section 39153(a) states:

"On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the result of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Sections 39150 have been achieved."

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- I. ARB Regulation
- II. Status of District Rule Adoptions
- III. Air District Model Rule

Acknowledgement

We would like to express ARB's gratitude to the management and staff of the 35 local air pollution control districts. The findings contained in this report were developed based on information and reporting requests they provided. These activities placed demands on staff still required to perform their normal duties. We acknowledge the professionalism and cooperation of District staff.

I. Executive Summary

A. Minor Violation Legislation

Legislation was enacted in 1996 (AB 2937, Brulte; Stats. 1996, Chapter 775), codified at sections 39150 through 39153 of the Health and Safety Code, that requires the ARB and California's 35 local and regional air pollution control and air quality management districts to adopt rules establishing a minor violation program. Under such a program, most minor violations would result in a notice to comply (NTC), rather than a notice of violation (NOV). An NTC provides a violator with an opportunity to correct a violation without the assessment of a fine or penalty. An NOV generally results in a fine or penalty.

The minor violation program prescribed by the legislation has several key components:

1. AB 2937 prohibits a violation that is knowing or willful, intentional, benefits the violator economically or competitively, or is part of a pattern of neglect or disregard for the law, from being classified as a minor violation;
2. AB 2937 prohibits violations that are chronic or that are committed by recalcitrant violators from being minor;
3. A "notice to comply" (NTC) issued for a minor violation is written in the course of conducting an inspection, unless testing must be done to determine the violation and such testing cannot be done during the course of the inspection. If, after test results are available, it is determined an NTC is warranted, the facility or operator will be notified in writing either by mail or in person;
4. The NTC shall clearly state the nature of the alleged minor violation and a means by which compliance can be achieved; and
5. The NTC as defined in AB 2937 must meet several criteria, including:
 - (a) a time limit to comply, not to exceed thirty days;
 - (b) the NTC must set forth a statement that the facility can be re-inspected at any time to ensure compliance with the NTC;
 - (c) an NTC shall not be issued for any minor violation that is corrected immediately in the presence of an inspector. Such a "quick fix" violation may be documented in the inspection report, but the person shall not be subject to any further enforcement action; and
 - (d) AB 2937 requires the ARB and the air districts to classify what violations can be considered minor and to establish an appeals process.

AB 2937 further states in H&SC section 39152(g), (j) and (k):

1. If a person fails to comply with the notice to comply, or if it is determined that the circumstances surrounding a minor violation are such that immediate enforcement action is warranted to prevent harm to the public health or safety or the environment, officials may take any needed enforcement action;
2. Nothing shall restrict the power of a city or district attorney, county counsel or Attorney General to pursue a criminal proceeding otherwise authorized by law, and nothing shall prevent local officials from cooperating or participating in such a proceeding;
3. If it is determined that circumstances are such that the assessment of a civil penalty is warranted or required by federal law, in addition to the issuance of a notice to comply, a civil penalty can be assessed if written findings that set forth the basis for the determination are made.

The legislation also requires that ARB prepare a report to the Legislature by January 1, 2000 on actions taken by ARB and the air districts to implement the legislation and the result of that implementation. This report is intended to fulfill that requirement.

B. Program Implementation - ARB and Local Air Districts

The ARB has adopted a minor violation regulation which became effective on May 7, 1999 (see Appendix I). The regulation applies to areas for which ARB is the primary enforcement authority: motor vehicle fuel content, consumer products, and cargo tanks. It incorporates key components of the legislation as noted above.

As of November 18, 1999, a total of 26¹ air districts have adopted a minor violation regulation and are presently implementing a minor violation program (see Appendix II). Most other districts are currently developing regulations. AB 2937 establishes no deadline for adopting a minor violation regulation and program. Like ARB, air districts have also incorporated the key components of the legislation into their regulations.

C. Results and Benefits of Implementation - ARB

Implementation resulted in changes to ARB's enforcement policy. Prior to adoption of the rule, emission-related violations were not considered minor by ARB. An NOV was required for all emissions-related violations and prosecutorial discretion was exercised in determining settlement terms and conditions, including the amount of any penalties. Penalty action did not necessarily follow every NOV issued, and the actual amount that was assessed depended upon the nature and circumstances of the violation(s), as generally determined at settlement negotiations between the agency and the violator.

¹ Additionally, two district board hearings are scheduled in December 1999 to consider adoption. See also Appendix II (*Status of District Rule Adoptions*).

Previously, a notice to comply was issued for procedural violations only. Adoption of ARB's minor violation program now requires ARB to issue a notice to comply instead of a notice of violation in situations where an emission violation is determined by the Executive Officer to be of such inconsequential amount that it is "de minimis". Specific changes to ARB's enforcement policy include:

- ✓ Addition of "de minimis" emission-related violations for consideration as minor;
- ✓ Documentation of "quick fix" violations in which no notice is written if the source immediately returns to compliance;
- ✓ An appeal process for NTC violations;
- ✓ Establishment of a maximum 30-day time limit within which the source must return to compliance; and
- ✓ Criteria defining chronic and recalcitrant violators.

To complement the regulation, the ARB has also developed a Policy and Procedure Manual for the issuance of NTCs for minor violations. Since May 1999, five NTCs have been issued for reporting violations associated with fuels regulations. Prior to implementation of ARB's new minor violation program, these would have been handled using ARB's enforcement discretion based on circumstances as described above (possibly with a Notice to Comply letter, possibly with a settlement conference).

Benefits of this legislation for ARB include the formalization of ARB's existing policy and more specific guidelines which are now provided in the Manual. The Manual cites certain instances when an NTC may be issued. This has resulted in a more specific and consistent method of issuing an NTC and with emphasis on returning a source to compliance within a 30-day timeframe.

D. Results and Benefits of Implementation - Local Air Districts

Results of air district implementation can be discussed in five categories:

1. Adoption of Rules

Twenty-six (26) of the 35 air districts have adopted a rule.

2. Establishment of a Minor Violation Program (where one did not exist)

The legislation resulted in the establishment of a minor violation policy in twelve (12) districts where there had been none.

3. Changes to Existing Minor Violation Programs

The legislation resulted in changes to existing minor violation enforcement policy in some districts. These changes include:

- ✓ Inclusion of a "record of corrective action taken" which documents actions taken

- by the source to return to compliance;
- ✓ Inclusion of "re-inspection language" whereby a source is notified that an inspector may re-inspect at any time to determine compliance with the NTC;
- ✓ "Quick Fix" violations in which no notice is written if the violation is fixed immediately in the presence of the inspector;
- ✓ Establishment of a maximum 30-day time limit within which the source must return to compliance;
- ✓ Inclusion of "de minimis" emissions-related violations as minor; and
- ✓ Establishment of an appeals process.

4. Issuance of NTCs under the New Minor Violation Program

Statewide, local air districts have issued approximately 5,300 NTCs.

5. Resulting Benefits of Legislation

In order to obtain information for this report, we sent each of the 35 local and regional air quality and air pollution control districts a survey. From these surveys, and through the information gathering process, ARB received comments on the benefits of the legislation. These comments included the following:

- ✓ Statements that the industry preferred the NTC, as it provided no penalties but got industry's attention enough to come into compliance;
- ✓ Formalization of existing minor violation policies;
- ✓ Improved structure in the guidelines for issuance of a notice to comply;
- ✓ Better consistency and uniformity of enforcement in the field;
- ✓ Better compliance with recording keeping deadlines; and,
- ✓ The establishment of minor violation policies in districts where there were none.

All of these improvements and benefits have resulted in a more specific and consistent method of issuing an NTC, with emphasis on returning a source to compliance within a 30-day timeframe.

E. Results of Implementation - Legislative Intent

H&SC 39150 states that it is the intent of the Legislature in enacting Chapter 3 - Minor Violations, to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the district, and the regulated community while maintaining protection of human health and safety and the environment. As part of the survey noted above, we asked each of the 35 air districts to respond either 'yes' or 'no' to each of the following questions:

- ✓ Do you believe the intent of the legislation has been met?
- ✓ Faster compliance times?

- ✓ Resource efficiency?
- ✓ Better working relationship with industry?
- ✓ No adverse effect on the environment or public health?

Of the 28 districts that returned a survey, five chose not to answer these questions indicating it was "too early to determine". Of the remaining 23 districts that returned our survey, 19 reported that they believed that the intent of the legislation has been met. Twenty-one reported that they believed that the legislation has had no adverse effect on the environment. Twenty-three (23) districts responded as noted below:

- ✓ 83% stated that the intent of legislation had been met;
- ✓ 52% stated that faster compliance has been achieved for minor violations;
- ✓ 61% stated that greater resource efficiency has resulted;
- ✓ 70% stated that better working relationships had resulted; and
- ✓ 91% stated that the program has had no adverse effect on public health or the environment.

ARB also reviewed each District's regulation and independently confirmed that the regulations were consistent with the legislation.

F. Degree to Which Health and Safety Code Section 39150(a) Has Been Achieved

The ARB and 74% (26) of the local air pollution control districts have complied with the requirements of 39150(a) by establishing an enforcement policy for minor violations, and by adopting a rule and incorporating language in that rule to require that the danger or potential danger the violation poses to human health or welfare or the environment be taken into account when determining what violations will be considered minor.

G. ARB Approval of Legislative Report

This report was presented to the Air Resources Board at the November 18, 1999 board meeting. The Board approved the report by adopting Resolution number 99-37.

